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I. STATUS OF CLAIMS

Claims 1-50 were pending at the time of the Office Action dated March 25, 2008.

Claims 1-6, 12-18, 21-31, 37-43, and 46-50 stand rejected under 35 USC §102(b) as being anticipated by Jaeger (US 6,345,028). *See Office Action*, p. 4 (March 25, 2008).

Claims 7-11, 19-20, 32-36, and 44-45 stand rejected under 35 USC §103(a) as being unpatentable over Jaeger in view of Ma et al. (US 5,926,649). *See Office Action*, p. 14 (March 25, 2008).

In addition, the Examiner objected to the specification.

II. ISSUES TO BE REVIEWED

The issues in this response relate to whether the art of record establishes a *prima facie* case of anticipation of Applicant's Claims 1-6, 12-18, 21-31, 37-43, and 46-50, and whether the art of record establishes a *prima facie* case of unpatentability of Applicant's Claims 7-11, 19-20, 32-36, and 44-45. For reasons set forth elsewhere herein, Applicant respectfully asserts that the art of record does not establish a *prima facie* case of unpatentability of any pending claim. Accordingly, Applicant respectfully requests that Examiner hold all pending Claims 1-50 allowable for at least the reasons described herein, and issue a Notice of Allowance on same.

III. ARGUMENT: ART OF RECORD DOES NOT ESTABLISH *PRIMA FACIE* CASE OF UNPATENTABILITY IN VIEW OF CITED ART OF RECORD

Applicant respectfully asserts herein that, under the MPEP and legal standards for patentability as set forth below, the art of record does not establish a *prima facie* case of the unpatentability of Applicant's claims at issue. Specifically, Applicant respectfully shows below that the art of record does not recite the text of Applicant's claims at issue, and hence fails to establish a *prima facie* case of unpatentability.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections and hold all claims to be allowable over the art of record.

A. MPEP Standards for Patentability¹

The MPEP states as follows: “the examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant. . . . If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.” *MPEP* § 2107 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)); *In Re Glaug*, 283 F.3d 1335, 62 USPQ2d 1151 (Fed. Cir. 2002) (“During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the applicant is entitled to the patent.”). Accordingly, unless and until an examiner presents evidence establishing *prima facie* unpatentability, an applicant is entitled to a patent on all claims presented for examination.

1. MPEP Standards for Determining Anticipation

An examiner bears the initial burden of factually supporting any *prima facie* conclusion of anticipation. *Ex Parte Skinner*, 2 U.S.P.Q.2d 1788, 1788-89 (B.P.A.I. 1986); *In Re King*, 801 F.2d 1324, 231 U.S.P.Q. (BNA) 136 (Fed. Cir. 1986); *MPEP* § 2107 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992) (“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability....”). Failure of an examiner to meet this burden entitles an applicant to a patent. *Id.* (“[i]f examination

¹ Applicant is aware that Examiner is familiar with the MPEP standards. Applicant is merely setting forth the MPEP standards to serve as a framework for Applicant’s arguments following and to ensure a complete written record is established. Should Examiner disagree with Applicant’s characterization of the MPEP standards, Applicant respectfully requests correction.

at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent”).

The MPEP indicates that in order for an examiner to establish a *prima facie* case of anticipation of an applicant’s claim, the examiner must first interpret the claim,² and thereafter show that the cited prior art discloses the same elements, in the same arrangement, as the elements of the claim which the examiner asserts is anticipated. More specifically, the MPEP states that “[a] claim is anticipated *only if each and every element as set forth in the claim is found*, either expressly or inherently described, in a single prior art reference. . . . The identical invention must be shown in as complete detail as is contained in the . . . claim. . . . The elements must be arranged as required by the claim” *MPEP* § 2131 (emphasis added). Consequently, under the guidelines of the MPEP set forth above, if there is *any* substantial difference between the prior art cited by an examiner and an applicant’s claim which the examiner asserts is rendered anticipated by the prior art, the prior art does NOT establish a *prima facie* case of anticipation and, barring other rejections, the applicant is entitled to a patent on such claim.

2. MPEP Standards for Determining Obviousness

“[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.”³ *MPEP* § 2142. The MPEP indicates that in order for an examiner to establish a *prima facie* case that an invention, as defined by a claim at issue, is obvious, the examiner must (1) interpret the claim at issue; (2) define one or more prior art reference components relevant to the claim at issue; (3) ascertain the differences between the one or more prior art reference components and

² With respect to interpreting a claim at issue, the MPEP directs that, during examination -- as opposed to subsequent to issue -- such claim be interpreted as broadly as the claim terms would reasonably allow, in light of the specification, when read by one skilled in the art with which the claimed invention is most closely connected. *MPEP* § 2111.

³ An invention, as embodied in the claims, is rendered obvious if an examiner concludes that although the claimed invention is not identically disclosed or described in a reference, the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *MPEP* § 2141 (citing 35 U.S.C. § 103).

the elements of the claim at issue; and (4) adduce objective evidence which establishes, under a preponderance of the evidence standard, a teaching to modify the teachings of the prior art reference components such that the prior art reference components can be used to construct a device substantially equivalent to the claim at issue. This last step generally encompasses two sub-steps: (1) adducement of objective evidence teaching how to modify the prior art components to achieve the individual elements of the claim at issue; and (2) adducement of objective evidence teaching how to combine the modified individual components such that the claim at issue, as a whole, is achieved. *MPEP* § 2141; *MPEP* § 2143. Each of these forgoing elements is further defined within the *MPEP*. *Id.*

This requirement has been explained recently by the Supreme Court in *KSR v. Teleflex*, 550 U.S. ____; 127 S. Ct. 1727 (2007) which noted that such a rejection requires "some articulated reasoning ... to support the legal conclusion of obviousness." As stated by the Court, obviousness can be established where "there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit.*" (*emphasis added*) See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.')." *KSR v. Teleflex*, 550 U.S. ____; 127 S. Ct. 1727 at 1741.

As further described by the Court "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what,

in some sense, is already known." *KSR v. Teleflex*, 550 U.S. ____; 127 S. Ct. 1727 at 1741.

a) Interpreting a Claim at Issue

With respect to interpreting a claim at issue, the MPEP directs that, during examination -- as opposed to subsequent to issue -- such claim be interpreted as broadly as the claim terms would reasonably allow when read by one skilled in the art with which the claimed invention is most closely connected. In practice, this is achieved by giving each of the terms in the claim the "plain meaning" of the terms as such would be understood by those having ordinary skill in the art, and if portions of the claim have no "plain meaning" within the art, or are ambiguous as used in a claim, then the examiner is to consult the specification for clarification. *MPEP* § 2111.

b) Definition of One or More Prior Art Reference Components Relevant to the Claim at Issue

Once the claim at issue has been properly interpreted, the next step is the definition of one or more prior art reference components (*e.g.*, electrical, mechanical, or other components set forth in a prior art reference) relevant to the properly interpreted claim at issue. With respect to the definition of one or more prior art reference components relevant to the claim at issue, the MPEP defines three proper sources of such prior art reference components, with the further requirement that each such source must have been extant at the time of invention to be considered relevant. These three sources are as follows: patents as defined by 35 U.S.C. § 102, printed publications as defined by 35 U.S.C. § 102, and information (*e.g.*, scientific principles) deemed to be "well known in the art"⁴ as defined under 35 U.S.C. § 102. *MPEP* § 2141; *MPEP* § 2144.

⁴ The fact that information deemed to be "well known in the art" can serve as a proper source of prior art reference components seems to open the door to subjectivity, but such is not the case. As a remedy to this potential problem, *MPEP* § 2144.03 states that if an examiner asserts that his position is derived from and/or is supported by a teaching or suggestion that is alleged to have been "well known in the art," and that if an applicant traverses such an assertion (that something was "well known within the art"), the examiner must cite a reference in support of his or her position. The same MPEP section also states that when a rejection is based on facts within the personal knowledge of an examiner, the data should be stated

c) **Ascertainment of Differences between Prior Art Reference Components and Claim at Issue; Teaching to Modify and/or Combine Prior Art Reference Components to Remedy Those Differences in Order to Achieve Recitations of Claim at Issue**

With one or more prior art components so defined and drawn from the proper prior art sources, the differences between the one or more prior art reference components and the elements of the claim at issue are to be ascertained. Thereafter, in order to establish a case of *prima facie* obviousness, an examiner must set forth a rationale, supported by objective evidence⁵ sufficient to demonstrate under a preponderance of the evidence standard, that in the prior art extant at the time of invention there was a teaching to modify and/or combine the one or more prior art reference components to construct a device practicably equivalent to the claim at issue.

The preferable evidence relied upon is an express teaching to modify/combine within the properly defined objectively verifiable sources of prior art. In the absence of such express teaching, an examiner may attempt to establish a rationale to support a finding of such teaching reasoned from, or based upon, express teachings taken from the defined proper sources of such evidence (*i.e.*, properly defined objectively verifiable sources of prior art). *MPEP* § 2144; *In re Dembiczak*, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999).

The MPEP recognizes the pitfalls associated with the tendency to subconsciously use impermissible "hindsight" when an examiner attempts to establish such a rationale. The MPEP has set forth at least two rules to ensure against the likelihood of such impermissible use of hindsight. The first rule is that:

as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons. *Id.* Thus, all sources of prior art reference components must be objectively verifiable.

⁵ The proper sources of the objective evidence supporting the rationale are the defined proper sources of prior art reference components, discussed above, with the addition of factually similar legal precedent. *MPEP* § 2144.

under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information,⁶ the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of an Applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search, and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon an Applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

MPEP § 2142 (emphasis added). Thus, if the only objective evidence of such teaching to modify and/or combine prior art reference components is an applicant's disclosure, no evidence of such teaching exists.⁷

The second rule is that if an examiner attempts to rely on some advantage or expected beneficial result that would have been produced by a modification and/or combination of the prior art reference components as evidence to support a rationale to establish such teachings to modify and/or combine prior art reference components, the *MPEP* requires that such advantage or expected beneficial result be objectively verifiable teachings present in the acceptable sources of prior art (or drawn from a convincing line of reasoning based on objectively verifiable established scientific principles or teachings). *MPEP* § 2144. Thus, as a guide to avoid the use of impermissible hindsight, these rules from the *MPEP* make clear that absent some objective evidence, sufficient to persuade under a preponderance of the evidence standard, no teaching of such modification and/or combination exists.⁸

⁶ "Factual information" is information actually existing or occurring, as distinguished from mere supposition or opinion. *Black's Law Dictionary* 532 (5th ed. 1979).

⁷ An applicant may argue that an examiner's conclusion of obviousness is based on improper hindsight reasoning. However, "[a]ny judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." *MPEP* § 2145(X)(A) (emphasis added).

⁸ *In Re Sang Su Lee* 277 F.3d 1338 (Fed. Cir. 2002) ("When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness.") See, e.g., *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 U.S.P.Q.2d 1001,

B. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Show or Suggest the Text of Independent Claim 1 as Presented Herein; Notice of Allowance of Same Respectfully Requested

1. Independent Claim 1

Independent Claim 1 recites:

1. A method comprising:

receiving a request for at least one specific content;

obtaining one or more temporal addresses corresponding to the at least one specific content, in response to the request for the at least one specific content; and

selecting data from at least one data stream having spatial-to-temporal translated data, in response to the one or more temporal addresses.

As shown following, the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 1. Accordingly, Applicant

1008 (Fed. Cir. 2001) (“the central question is whether there is reason to combine [the] references,” a question of fact drawing on the *Graham* factors). *“The factual inquiry whether to combine references must be thorough and searching.” Id. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with.* See, e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000) (“a showing of a suggestion, teaching, or motivation to combine the prior art references is an ‘essential component of an obviousness holding’”) (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”); *In re Dance*, 160 F.3d 1339, 1343, 48 U.S.P.Q.2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988) (“teachings of references can be combined only if there is some suggestion or incentive to do so.”) (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984)). The need for specificity pervades this authority. See, e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (“even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.”)).

respectfully requests that Examiner allow Independent Claim 1, as described more fully below.

a) Technical Material Cited by Examiner Does Not Show or Suggest the Text of at Least Independent Claim 1.

As set forth above, Independent Claim 1 recites as follows:

1. A method comprising:

[a] *receiving a request for at least one specific content;*

[b] obtaining one or more *temporal addresses* corresponding to the at least one specific content, in response to the request for the at least one specific content; and

[c] selecting data from at least one data stream having *spatial-to-temporal translated data*, in response to the one or more temporal addresses.⁹
(Emphases added.)

With respect to claim 1, Examiner has stated,

“Jaeger discloses a method comprising:

receiving a request for at least one specific content (col. 5, lines 49-52; Fig. 1); *It should be noted that it is inherently required there be some kind of ‘request’ in order to read tracks from a disk.*

obtaining one or more temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content (col. 5, lines 52-63; Fig. 1); *It should be noted that the ‘time stamps’ are analogous to the ‘temporal addresses.’*”

and selecting data from at least one data stream having spatial-to-temporal translated data, in response to the one or more temporal addresses (col. 6, lines 49-63; Fig. 2). *It should be noted that the re-ordered audio/video/data tracks/signals being streamed from the RAM buffer are analogous to the ‘spatial-to-temporal translated data.’” See Examiner’s Office Action, p. 4-5 (March 25, 2008).*

⁹ The lettering of the clauses herein is merely for sake of clarity of argument and should not be taken to imply any particular ordering of the clauses.

**(I) Examiner Citations to Jaeger With Regard to
Clause [a] of Independent Claim 1:**

Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger does not recite the text of clause [a] of Applicant's Independent Claim 1. Rather, the portions of Jaeger cited by Examiner with respect to Claim 1 recite as follows:

First, incremental temporal segments of each recorded audio track are read from the disk 11 in a predetermined numerical order, e.g., starting with track 1 and ending with the last recorded track (e.g., track N).

...

Fig. 1 is a schematic representation of the process of the invention for reorganizing a large plurality of audio/video/data tracks or signals on a disk drive for playback.

See Jaeger (US 6,345,028, 5:49-52; 4:55-57; Fig. 1).

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [a] as recited in Independent Claim 1. For example, Jaeger discloses “incremental temporal segments of each recorded audio track are read from the disk.” On the other hand, clause [a] recites “*receiving a request for at least one specific content;*” (emphasis added). Neither the cited Figure nor text show or recite “receiving a request” or “a request for at least one specific content”. The Examiner asserts that “*It should be noted that it is inherently required there be some kind of ‘request’ in order to read tracks from a disk,*” however, the Examiner provides no objective evidence to support this requirement or its inherency.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [a] of Claim 1. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [a] of Independent Claim 1 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something

related to Clause [a] of Independent Claim 1. Applicant respectfully points out that the Applicant's Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant's application, which is impermissible hindsight use. Thus, at present, Examiner's assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Applicant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(2) Examiner Citations to Jaeger With Regard to
Clause [b] of Independent Claim 1:**

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [b] of Applicant's Independent Claim 1, which recites, "obtaining one or more temporal addresses corresponding to the at least one specific content, in response to the request for the at least one specific content." The Examiner again cites Fig. 1; and cites col. 5, lines 52-63 of Jaeger, which states:

"The temporal segments are all of the same short duration, such as 100 ms, although other durations may be used. In the example of FIG. 1, the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1. Frame 1 is labeled with a time stamp which indicates the starting point of the frame and also the number of the frame. Likewise, the second 100 ms segments of tracks 1-N are then read from the disk drive 11 and placed in the RAM buffer as data frame 2, which is also labeled with its respective time stamp." (See Jaeger 5: 52-63.)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [b] as recited in Independent Claim 1. For example, Jaeger states "temporal segments are all of the same short duration, such as 100 ms, ... the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1." On the other hand, the cited portion of Jaeger does not recite obtaining one or more *temporal addresses* corresponding to the at least one specific content, as recited in clause [b] of Claim 1.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [b] of Claim 1. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [b] of Independent Claim 1 as the Examiner alleges.

Again, given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [b] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(3) Examiner Citations to Jaeger With Regard to
Clause [c] of Independent Claim 1:**

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [c] of Applicant's Independent Claim 1, which recites, "selecting data from at least one data stream having spatial-to-temporal translated data, in response to the one or more temporal addresses."

In rejection of the element, the Examiner cites col. 6, lines 49-63 and Fig. 2, and of Jaeger, which state:

With regard to FIG. 2, when it is desired to play back the N audio tracks simultaneously, the disk drive is directed to the time stamp location of composite data frame 1, which is read into a memory buffer, followed by frame 2, and the like reiteration. The buffer may comprise the same RAM that is used to assemble the frames initially, as described previously. Each composite data frame loaded into the buffer is disassembled into its separate component segments, and each segment is defined as an individual audio/video/data track or signal which can be sent to a respective output. The segments contained in each composite data frame can be streamed to their respective outputs at a data rate sufficient to permit continuous, uninterrupted playback of each track or signal, whereby all the tracks/signals have the quality and continuity of multi-track, simultaneous playback.

...

FIG. 2 is a schematic representation of the process of the invention for readout and simultaneous playback of the re-organized tracks/signals formed as shown in FIG. 1.

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [c] as recited in Independent Claim 1. For example, Jaeger states "the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled." On the other hand, the cited portion of Jaeger does not recite selecting data from at least one *data stream* having *spatial-to-temporal*

translated data, in response to the one or more temporal addresses, as recited in clause [c] of Claim 1.

The Examiner states that “*It should be noted that the re-ordered audio/video/data tracks/signals being streamed from the RAM buffer are analogous to the ‘spatial-to-temporal translated data.’*” of Jaeger, but the Examiner provides no objective evidence justifying the use of an analogy or justifying the analogy itself drawn between signals streamed from a RAM, and on the other hand, the *data stream* having *spatial-to-temporal translated data* of clause [c] of Applicant’s Independent Claim 1, from which the specifically requested content is available at a given time via a temporal address.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [c] of Claim 1. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [c] of Independent Claim 1 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [c] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or

is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

Accordingly, for these additional reasons, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

2. Dependent Claims 2-6, 12-18, and 21-25: Patentable for at Least Reasons of Dependency from Independent Claim 1.

Claims 2-6, 12-18, and 21-25 depend either directly or indirectly from Independent Claim 1. "A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 2-6, 12-18, and 21-25 are patentable for at least the reasons why Independent Claim 1 is patentable. Accordingly, Applicant respectfully requests that Examiner hold Dependent Claims 2-6, 12-18, and 21-25 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

C. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Show or Suggest the Text of Independent Claim 26 as Presented Herein; Notice of Allowance of Same Respectfully Requested

1. Independent Claim 26

Independent Claim 26 recites:

26. A system comprising:

[a] means for receiving a request for at least one specific content;

[b] means for obtaining one or more temporal addresses corresponding to the at least one specific content, in response to the request for the at least one specific content; and

[c] means for selecting data from at least one data stream having spatial-to-temporal translated data, in response to the one or more temporal addresses.

As described below, Applicant respectfully submits that the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 26. Accordingly, Applicant respectfully requests that Examiner allow Independent Claim 26.

a) Technical Material Cited by Examiner Does Not Recite the Text of at Least Independent Claim 26.

With respect to claim 26, Examiner has stated,

“Regarding claim 26, Jaeger discloses a system comprising:

means for receiving a request for at least one specific content (col. 5, lines 49-52; Fig. 1); *See the citation note for the similar limitation in claim 1 above,*

means for obtaining one or more temporal addresses corresponding to the at least one specific content, in response to the request for the at least one specific content (col. 5, lines 52-63; Fig. 1); *See the citation note for the similar limitation in claim 1 above,*

and means for selecting data from at least one data stream having spatial-to-temporal translated data, in response to the one or more temporal addresses (col. 6, lines 49-63; Fig.) *See the citation note for the similar limitation in claim 1 above.*

**(1) Examiner Citations to Jaeger With Regard to
Clause [a] of Independent Claim 26:**

Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger does not recite the text of clause [a] of Applicant's Independent Claim 26. Rather, the portions of Jaeger cited by Examiner with respect to Claim 26 recite as follows:

First, incremental temporal segments of each recorded audio track are read from the disk 11 in a predetermined numerical order, e.g., starting with track 1 and ending with the last recorded track (e.g., track N).

...

Fig. 1 is a schematic representation of the process of the invention for re-organizing a large plurality of audio/video/data tracks or signals on a disk drive for playback.

See Jaeger (US 6,345,028, 5:49-52; 4:55-57; Fig. 1).

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [a] as recited in Independent Claim 26. For example, Jaeger discloses “incremental temporal segments of each recorded audio track are read from the disk.” On the other hand, clause [a] recites “means for *receiving a request* for at least one *specific content*,” (emphasis added). The cited text and the Figure are silent regarding a means for “receiving a request” or “a request for at least one specific content”. The Examiner asserts that “*It should be noted that it is inherently required there be some kind of ‘request’ in order to read tracks from a disk,*” however, the Examiner provides no evidence to support this requirement or its inherency.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [a] of Claim 26. Applicant further respectfully points

out that the Examiner has provided no objectively verifiable evidence or reason as to why the text of the reference passages should be interpreted to teach clause [a] of Independent Claim 26 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 26. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 26 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” See, e.g., MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 26.

Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(2) Examiner Citations to Jaeger With Regard to
Clause [b] of Independent Claim 26:**

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [b] of Applicant's Independent Claim 26, which recites, "means for obtaining one or more temporal addresses corresponding to the at least one specific content, in response to the request for the at least one specific content." The Examiner again cites Fig. 1; and cites col. 5, lines 52-63 of Jaeger, which states:

"The temporal segments are all of the same short duration, such as 100 ms, although other durations may be used. In the example of FIG. 1, the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1. Frame 1 is labeled with a time stamp which indicates the starting point of the frame and also the number of the frame. Likewise, the second 100 ms segments of tracks 1-N are then read from the disk drive 11 and placed in the RAM buffer as data frame 2, which is also labeled with its respective time stamp." (*See Jaeger* 5: 52-63.)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [b] as recited in Independent Claim 26. For example, Jaeger states "temporal segments are all of the same short duration, such as 100 ms, ... the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1." On the other hand, the cited portion of Jaeger does not recite means for obtaining one or more *temporal addresses* corresponding to the at least one specific content, as recited in clause [b] of Claim 26. The Examiner states that "*It should be noted that the 'time stamps' are analogous to the 'temporal addresses,'*" but the Examiner provides no objectively verifiable

evidence justifying the use of this analogy or justifying the analogy itself between a conventional time stamp on data stored spatially on a disk and the *temporal addresses* of clause [b] of Applicant's Independent Claim 26.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [b] of Claim 26. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [b] of Independent Claim 26 as the Examiner alleges.

Again, given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as "teaching" something related to Clause [b] of Independent Claim 26. Applicant respectfully points out that the Applicant's Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant's application, which is impermissible hindsight use. Thus, at present, Examiner's assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 26 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Applicant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." See, e.g., MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly*

Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 26. Accordingly, for at least the foregoing reasons, Applicant respectfully asks Examiner to hold amended Independent Claim 26 allowable and to issue a Notice of Allowance of same.

**(3) Examiner Citations to Jaeger With Regard to
Clause [c] of Independent Claim 26:**

Furthermore, Applicant respectfully points out that Applicant has reviewed the portions of Jaeger identified by Examiner, and so far as Applicant can discern, Jaeger also does not recite the text of clause [c] of Applicant's Independent Claim 26, which recites, “means for selecting data from at least one *data stream* having *spatial-to-temporal translated data*, in response to the one or more temporal addresses.”

The Examiner cites col. 6, lines 49-63 and Fig. 2, and of Jaeger, which state:

With regard to FIG. 2, when it is desired to play back the N audio tracks simultaneously, the disk drive is directed to the time stamp location of composite data frame 1, which is read into a memory buffer, followed by frame 2, and the like reiteration. The buffer may comprise the same RAM that is used to assemble the frames initially, as described previously. Each composite data frame loaded into the buffer is disassembled into its separate component segments, and each segment is defined as an individual audio/video/data track or signal which can be sent to a respective output. The segments contained in each composite data frame can be streamed to their respective outputs at a data rate sufficient to permit continuous, uninterrupted playback of each track or signal, whereby all the tracks/signals have the quality and continuity of multi-track, simultaneous playback.

...

FIG. 2 is a schematic representation of the process of the invention for readout and simultaneous playback of the re-organized tracks/signals formed as shown in FIG. 1.

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [c] as recited in Independent Claim 26. For example, Jaeger states “the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled.” On the other hand, the cited portion of Jaeger does not recite means for selecting data from at least one *data stream* having *spatial-to-temporal translated data*, in response to the one or more temporal addresses. Rather, the Examiner states that “*It should be noted that the re-ordered audio/video/data tracks/signals being streamed from the RAM buffer are analogous to the ‘spatial-to-temporal translated data’*”, but the Examiner provides no objective evidence justifying the use of an analogy or justifying the analogy itself between signals streamed from a RAM and a *data stream* having *spatial-to-temporal translated data* of clause [c] of Applicant’s Independent Claim 26.

Applicant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [c] of Claim 26. Applicant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [c] of Independent Claim 26 as the Examiner alleges.

Given that Applicant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [c] of Independent Claim 1. Applicant respectfully points out that the Applicant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Applicant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Applicant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g.,* MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

Thus, for these additional reasons, and under the MPEP standards as set forth above, Applicant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, Applicant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

2. Dependent Claims 27-31, 37-43, and 46-50: Patentable for at Least Reasons of Dependency from Independent Claim 26.

Claims 27-31, 37-43, and 46-50 depend either directly or indirectly from Independent Claim 26. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 27-31, 37-43, and 46-50 are patentable for at least the reasons why Independent Claim 26 is patentable. Accordingly, Applicant respectfully requests that Examiner hold Dependent Claims 27-31, 37-43, and 46-50 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

D. Technical Material Cited by Examiner (Jaeger in view of Ma (US 5,926,649)), Does Not Show or Suggest the Text of Claims 7-11 and 19-20 as Presented Herein; Notice of Allowance of Same Respectfully Requested

Claims 7-11 and 19-20 depend from Independent Claim 1. As remarked above, the Examiner has not established a prima facie case that the art of record anticipates Independent Claim 1.

Besides claims 7-11 and 19-20 being allowable because they include all the language of their allowable base claim 1, these claims are also allowable because in combining Jaeger with Ma, the Examiner has not established a prima facie case of obviousness with respect to claims 7-11 and 19-20. That is, Jaeger in view of Ma does not establish a prima facie case of obviousness for any of claims 7-11 and 19-20.

Ma describes “schedulers that organize data stream requests into groups that share access to the disks of the storage subsystem, and manage the disk retrieval bandwidth and access times” (emphasis added) (See Ma, col. 11, lines 15-21). The Ma scheduler, however, does not teach or suggest “schedule” and “temporal addresses” as used in claims 7-11 and 19-20.

Accordingly, under the MPEP standards as set forth above, the Examiner has not established a prima facie case that the art of record renders unpatentable claims 7-11 and 19-20. Applicant respectfully asks the Examiner to hold claims 7-11 and 19-20 allowable and issue a Notice of Allowance of same.

E. Technical Material Cited by Examiner (Jaeger in view of Ma (US 5,926,649)), Does Not Show or Suggest the Text of Claims 32-36 and 44-45 as Presented Herein; Notice of Allowance of Same Respectfully Requested

Claims 32-36 and 44-45 depend from Independent Claim 26. As remarked above, the Examiner has not established a prima facie case that the art of record anticipates Independent Claim 26. Besides claims 32-36 and 44-45 being allowable because they include all the language of their allowable base claim 26, these claims are also allowable because in combining Jaeger with Ma, the Examiner has not established a prima facie case of obviousness with respect to claims 32-36 and 44-

45. That is, Jaeger in view of Ma does not establish a *prima facie* case of obviousness for any of claims 32-36 and 44-45.

Ma describes “schedulers that organize data stream requests into groups that share access to the disks of the storage subsystem, and manage the disk retrieval bandwidth and access times” (emphasis added) (See Ma, col. 11, lines 15-21). The Ma scheduler, however, does not teach or suggest “schedule” and “temporal addresses” as used in claims 32-36 and 44-45.

Accordingly, under the MPEP standards as set forth above, the Examiner has not established a *prima facie* case that art of record renders unpatentable claims 32-36 and 44-45. Applicant respectfully asks the Examiner to hold claims 32-36 and 44-45 allowable and issue a Notice of Allowance of same.

1. Dependent Claims 7-11 and 19-20: Patentable for at Least Reasons of Dependency from Independent Claim 1.

In addition to the above remarks, claims 7-11 and 19-20 also depend either directly or indirectly from Independent Claim 1. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” See 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 7-11 and 19-20 are patentable for at least the reasons why Independent Claim 1 is patentable.

Given that Applicants have shown above what Jaeger and Ma actually recite, the question thus naturally arises as to how Examiner saw Jaeger and Ma as teaching clauses [a], [b], and [c] of Independent Claim 1, or other recitations of dependent claims 7-11 and 19-20. Applicants respectfully point out that the Applicants’ Application is the only objective examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and Jaeger and Ma’s express recitations (see above), it follows that Examiner is interpreting Jaeger and Ma through the lens of Applicants’ application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger and Ma are untenable.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Applicant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g., MPEP S 2144.03(C), If Applicant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

Accordingly, Applicant respectfully requests that Examiner hold Dependent Claims 7-11 and 19-20 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

2. Dependent Claims 32-36 and 44-45: Patentable for at Least Reasons of Dependency from Independent Claim 26.

In addition to the above remarks, claims 32-36 and 44-45 depend either directly or indirectly from Independent Claim 26. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 32-36 and 44-45 are patentable for at least the reasons why Independent Claim 26 is patentable.

Again, since Applicants have shown above what Jaeger and Ma actually recite, the question thus naturally arises as to how Examiner saw Jaeger and Ma as teaching clauses [a], [b], and [c] of Independent Claim 26, or other recitations of dependent claims 32-36 and 44-45. Applicants respectfully point out that the Applicants’ Application is the only objective examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this

and Jaeger and Ma's express recitations (see above), it follows that Examiner is interpreting Jaeger and Ma through the lens of Applicants' application, which is impermissible hindsight use. Thus, at present, Examiner's assertions regarding Jaeger and Ma are untenable.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Applicant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Applicant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." See, e.g., MPEP S 2144.03(C), *If Applicant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

Accordingly, Applicant respectfully requests that Examiner hold Dependent Claims 32-36 and 44-45 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

F. Objections to Specification

The Office objected to the abstract of the specification, and a substitute abstract has been provided. The Applicant respectfully requests reconsideration and withdrawal of this objection.

The Office objected to the disclosure as containing an embedded hyperlink and/or other form of browser-executable code. However, Applicant is unable to locate any hyperlink or executable code, and encourages the Office to point out the location of such hyperlink or code.

IV. CONCLUSION

Applicant may have during the course of prosecution cancelled and/or amended one or more claims. Applicant notes that any such cancellations and/or amendments will have transpired (i) prior to issuance and (ii) in the context of the rules that govern claim interpretation during prosecution before the United States Patent and Trademark Office (USPTO). Applicant notes that the rules that govern claim interpretation during prosecution form a radically different context than the rules that govern claim interpretation subsequent to a patent issuing. Accordingly, Applicant respectfully submits that any cancellations and/or amendments during the course of prosecution should be held to be tangential to and/or unrelated to patentability in the event that such cancellations and/or amendments are viewed in a post-issuance context under post-issuance claim interpretation rules.

Insofar as that the Applicant may have during the course of prosecution cancelled/amended claims sufficient to obtain a Notice of Allowability of all claims pending, Applicant may not have during the course of prosecution explicitly addressed all rejections and/or statements in Examiner's Office Actions. The fact that rejections and/or statements may not be explicitly addressed during the course of prosecution should NOT be taken as an admission of any sort, and Applicant hereby reserves any and all rights to contest such rejections and/or statements at a later time. Specifically, no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended (e.g., with respect to any facts of which Examiner took Official Notice, and/or for which Examiner has supplied no objective showing, Applicant hereby contests those facts and requests express documentary proof of such facts at such time at which such facts may become relevant). For example, although not expressly set forth during the course of prosecution, Applicant continues to assert all points of (e.g. caused by, resulting from, responsive to, etc.) any previous Office Action, and no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended. Specifically, insofar as that Applicant does not consider the cancelled/unamended

claims to be unpatentable, Applicant hereby gives notice that it may intend to file and/or has filed a continuing application in order prosecute such cancelled/unamended claims.

With respect to any cancelled claims, such cancelled claims were and continue to be a part of the original and/or present patent application(s). Applicant hereby reserves all rights to present any cancelled claim or claims for examination at a later time in this or another application. Applicant hereby gives public notice that any cancelled claims are still to be considered as present in all related patent application(s) (e.g. the original and/or present patent application) for all appropriate purposes (e.g., written description and/or enablement). Applicant does NOT intend to dedicate the subject matter of any cancelled claims to the public.

The Examiner is invited to contact Dale Barr (360)627-7147, or Dale R. Cook at (425)467-2260, with any issues that may advance prosecution of the application on the merits.

Respectfully submitted,

Dec. 1, 2008
Date

/Dale C. Barr, Reg. No. 40,498/
Dale C. Barr
Registration No. 40,498